IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

FRIDAY, THE 2ND NOVEMBER 2007 / 11TH KARTHIKA 1929

RCRev..No. 17 of 2005()

RCA.28/2002 of ADDL.DISTRICT COURT, THRISSUR
RCP.22/2000 of ADDL.M.C.,IRINJALAKUDA
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: REVISION PETITIONER/APPELLANT/PETITIONER:

ANTONY, S/O. POULOSE,
AGED 66 YEARS, KUTTIKADAN HOUSE, KODAKARA
VILLAGE AND DESOM, MUKUNDAPURAM TALUK,
THRISSUR DISTRICT.

BY ADV. SRI.P.VIJAYA BHANU
SRI.M.GEORGE THOMAS

RESPONDENTS: RESPONDENT:

JOSE MATHEW, S/O. MATHEW,
AGED 33 YEARS, LIC AGENT, UKKAN HOUSE,
KODAKARA VILLAGE AND DESOM, MUKUNDAUPRAM TALUK,
THRISSUR DISTRICT.

BY ADV. SRI.S.V.BALAKRISHNA IYER
SRI.P.B.KRISHNAN

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 25/10/2007, THE COURT ON 2/11/2007 PASSED THE FOLLOWING:

K. Balakrishnan Nair &
T.R. Ramachandran Nair, JJ.

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R.C.R.NO.17 OF 2005

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Dated this the 2nd day of November, 2007

O R D E R

T.R. Ramachandran Nair, J.

This revision petition is filed by the landlord, aggrieved by the concurrent decisions rendered by the Rent Control Court and the Appellate Authority, whereby the eviction petition stands dismissed. The landlord sought eviction of the tenanted premises pleading that the same is required for expanding his business. The landlord is doing business in the sale of cycle spare parts and is also conducting cycle repairs in the same building, on the western side of the petition schedule room. According to him, the articles required for his business, could not be stored in his shop room and so, they are stored in the adjacent room which, in fact, is his bed room. He therefore wanted additional accommodation of the petition schedule room for storing the articles and also for expanding the business. The tenant opposed the said prayer contending that the landlord is only conducting a cycle repair shop in the room and is not conducting any business of sale of cycle spare parts, etc. It is also pointed out that for the very same purpose, he has filed another eviction petition in respect of the adjacent room which

is in the possession of one Mr. Joy and the need urged is not bonafide.

2. The Rent Control Court as well as the Appellate Authority found that even though what is put forth is an alleged bonafide need under Section 11(3) of the Act, actually it clearly attracts the provisions of Section 11(8), i.e., requirement for additional accommodation. It was held that the need put forth is not bonafide and it is only a ruse for eviction. It was also held that he had sought eviction in R.C.P.No.22/1995 for the very same purpose, i.e. for additional accommodation and hence, the need set up here, cannot be an honest one.

3. Learned counsel for the petitioner argued that the need set up by the landlord is a genuine one. He is conducting a cycle spare parts shop. The rear room is actually a bed room and the fact that he had sought eviction of the room occupied by Mr. Joy, is not a ground to reject the claim. The proceedings in R.C.P.No.22/1995 have not become final and he had not obtained vacant possession of the said room.

4. Both the authorities have examined the evidence in detail in the light of the contentions raised by the parties. Normally, unless the findings rendered are totally erroneous or perverse, in exercise of the power of revision this court will not be justified in upsetting the same. Both the authorities approached the question as one for additional accommodation

under Section 11(8) of the Act and we also concur with the said view. An analysis of the evidence shows that the petition schedule room is the second room from the eastern side of the main building. Ext.C1 is the commission report. It is stated that the 4th room from the east is occupied by the landlord and the shop room occupied by Mr. Joy is situated in between these shop rooms. The entire building faces the National Highway. The Commissioner noted that 14 old cycles were kept in front of the room and there were two other cycles inside the shop room and he also noted that tyres, tubes and spare parts of the cycle were exhibited there. As far as the rear room is concerned, it has a length of 5.5 meters and breadth of 3.3 meters. At the time of inspection, the Commissioner noted that, therein above 25 new cycle rims were lying spread out. It is important to notice that this room has direct access from the shop room occupied by the landlord. The Commissioner found a very old compressor fully covered with dust, kept in that room and that the same was not having electric connection also. Actually there was no evidence to show that the petitioner was running a full fledged business in these rooms. The Commissioner could not see any documents, except two bills, relating to the business being conducted by the landlord. The appellate authority also noticed that in the cross examination, petitioner disclosed that he could not say the turnover of his business during

the period 1993-1994 or at the time of filing of the rent control petition. It was also admitted by him that he had no registration with the Sales Tax Department and the business was not registered under the Shops and Commercial Establishments Act. The landlord did not produce any document relating to the conduct of the business also. Thus, it is a case where no worthwhile data is available as far as the business carried on by the landlord is concerned. No attempt was made by him to show the real purpose for which additional accommodation is sought.

5. It is also clear from the evidence that he was formerly conducting a business in the name and style of 'Jaison Electricals' and R.W.4 who was an employee under the landlord for conduct of that business, stated that some articles relating to the said electrical shop were being kept in the car shed and in the rear room. It will show that after the said business was stopped, the space covered by the rear room was available to him for conduct of business. In view of the above evidence, the authorities found that the space occupied by the landlord is sufficient for the purpose of his business, especially in view of the fact that he could not plead and prove properly the nature of expansion of the business, the requirement for the same and the volume of business presently run by him. It is evident that apart from the old compressor in the rear room, there is nothing worthwhile to show that he

is intending to expand his business. Therefore, we concur with the view that the plea raised by the landlord has not been established. The learned counsel for the landlord submitted that the Appellate Authority was right in finding that the other room for which he sought eviction, was not readily available and the matter is still pending. We do not find any reason to differ from that finding, but that will not help the landlord to get eviction, in view of the facts and evidence noted above. It is a case where he has got eviction of another tenant for the very same purpose going by Ext.B5. It is in respect of the adjoining room occupied by Shri Joy. The said fact is not stated in the eviction petition herein. Not that he is barred from filing such petitions, but it really reflects on the bonafides of his claim. Coupled with this, evidence is available that the landlord admitted that he refused to receive the rent for the months December 1999 and January 2000 anticipating the institution of the rent control proceedings. The court below noticed this fact to find that the approach made by the landlord is not bonafide at all. Thus, we find that the landlord has not established his claim for additional accommodation and the finding that the bonafide need has not been properly established, does not call for any interference in exercise of the revisional powers of this court. On a detailed consideration of the evidence, the Appellate Authority also found that the hardship that will be

caused to the tenant, if he is evicted, will outweigh the advantage to the landlord. No circumstances have been pointed out to show that this finding is erroneous. Therefore, the said finding also does not call for any interference.

In the light of the above, the revision petition is without any merit and the same is dismissed. No costs.

(K. Balakrishnan Nair, Judge.)

(T.R. Ramachandran Nair, Judge.)

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